

37 Am. Jur. 2d Fraud and Deceit § 131

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Fraud and Deceit

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IV. False Representations

F. Intent to Deceive, or to Induce Reliance; Knowledge of Falsity

3. Particular Kinds of Representations, Transactions, Relief, etc.

c. Transactions

§ 131. Sales

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  [13\(3\)](#)

Trial Strategy

[Misrepresentation in Sale of Animal, 35 Am. Jur. Proof of Facts 2d 607](#)

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 91 to 122](#) (Complaints, petitions, or declarations—Fraud in sales of personal property)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 123 to 131](#) (Complaint—Fraud in securing sales of goods on credit)

The general rule in most jurisdictions is that representations by a seller or vendor as to the subject matter of a sale must be made with an intent to deceive in order to be fraudulent.¹ This is especially true if the seller in good faith believed his or her

representations to be true and did not make them recklessly or regardless of whether they were true.² Likewise, it is the general rule in many jurisdictions that it is necessary to show scienter or knowledge on a vendor's part of the falsity of a representation in order to sustain a charge of fraud against the vendor.³ On the other hand, according to the view taken in many cases, if a vendor, without any knowledge as to whether a statement is true or not, undertakes to make material representations as to the character of the subject matter of the sale, a charge of fraud may be based thereon, as in other cases, the vendor's undertaking as of the vendor's own knowledge to assert the truth of that which the vendor does not know to be true is a fraud on the party dealing with the vendor.⁴ A vendor may be charged with fraud upon the basis of statements made carelessly and recklessly.⁵ Thus, if a seller makes a representation of the existence of a fact, as if based on personal knowledge, recklessly and without regard to whether such fact exists, and without any reason for believing that it does exist, a charge of fraud may be based on its falsity even though in fact the seller did not know that it was false.⁶ This is especially true where the relief sought by the purchaser is that of rescission.⁷

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Footnotes

- 1 L. C. James Motor Co. v. Wetmore, 36 Ariz. 382, 286 P. 180 (1930); Towels v. Campbell, 204 Ky. 591, 264 S.W. 1107, 50 A.L.R. 175 (1924); Halsey v. Minnesota-South Carolina Land & Timber Co., 174 S.C. 97, 177 S.E. 29, 100 A.L.R. 1 (1934).
For representations as to financial status, credit, and solvency in sales with respect to intent to deceive and scienter, see §§ 125 to 127.
One who, in a sale, rental, or exchange transaction with another, makes a misrepresentation of a material fact for the purpose of inducing the other to act or to refrain from acting in reliance upon it, is subject to liability to the other for pecuniary loss caused to him or her by his or her justifiable reliance upon the misrepresentation even though it is not made fraudulently or negligently. *Restatement Second, Torts* § 552C(1).
- 2 Lewark v. Carter, 117 Ind. 206, 20 N.E. 119 (1889).
- 3 Towels v. Campbell, 204 Ky. 591, 264 S.W. 1107, 50 A.L.R. 175 (1924).
- 4 Spiess v. Brandt, 230 Minn. 246, 41 N.W.2d 561, 27 A.L.R.2d 1 (1950); Halsey v. Minnesota-South Carolina Land & Timber Co., 174 S.C. 97, 177 S.E. 29, 100 A.L.R. 1 (1934).
- 5 Holland Furnace Co. v. Korth, 43 Wash. 2d 618, 262 P.2d 772, 41 A.L.R.2d 1166 (1953).
- 6 L. C. James Motor Co. v. Wetmore, 36 Ariz. 382, 286 P. 180 (1930).
- 7 Wilson v. Robinson, 21 N.M. 422, 155 P. 732 (1916); Jeffreys v. Weekly, 81 Or. 140, 158 P. 522 (1916).

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